

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

MARKWEST LIBERTY MIDSTREAM
& RESOURCES, L.L.C.,
Plaintiff,

v.

CIVIL ACTION NO. 16-C-82
JUDGE H. CHARLES CARL, III

J.F. ALLEN COMPANY;
AMEC FOSTER WHEELER
ENVIRONMENT & INFRASTRUCTURE, INC.; and
REDSTONE INTERNATIONAL, INC.;
Defendants¹,

BENCH TRIAL ORDER
DAY TEN: OCTOBER 2, 2020

1. On the 2nd day of October, 2020, this matter came on before the Court for a bench trial. By prior agreement of the parties, the Court conducted the bench trial in Hampshire County, West Virginia. The Plaintiff was present by its counsel Kevin L. Colosimo, Joseph M. Ward, and Jonathan G. Brill, and its in-house counsel Jonathan Allen. Defendant J.F. Allen Company was present by its counsel Douglas C. LaSota and Nicole L. Carnevale and by its President, Greg Hadjis. Defendant Amec Foster Wheeler Environment & Infrastructure, Inc. was present by its counsel Vic L. McConnell and by its Lead Engineer Chris Ramsey. Defendant Redstone International, Inc. was present by its counsel Bruce E. Stanley and Michael A. Jacks.

2. The Court inquired as to whether counsel had any objections to the Day Order from yesterday. Counsel had no objections and the Court then entered the Order.

3. Thereafter, Mr. LaSota re-called Greg Hadjis to the stand and his re-direct examination began.

¹ The remaining Defendants were dismissed, by agreement of the parties, prior to the bench trial.

4. Thereafter, Mr. Hadjis was subject to re-cross examination by Mr. Colosimo.
During cross-examination, the Court took judicial notice of the NOAA weather reports.

5. Thereafter, Mr. Hadjis was subject to re-cross examination by Mr. Stanley and by Mr. McConnell.

6. Thereafter, Mr. Hadjis was dismissed as a witness.

7. Thereafter, Mr. LaSota called Jerry DiMaggio to the stand and he was duly sworn and subject to direct examination. Following qualification questions, the Court recognized Mr. DiMaggio as an Expert in the Geotechnical Field, without objection. Mr. DiMaggio primarily presented narrative testimony, pursuant to agreement of counsel, with some questioning by Mr. LaSota. During testimony, Mr. LaSota marked the following Exhibits, as they were not marked prior to trial: **J.F. Allen 231** (CV of Jerry DiMaggio); **J.F. Allen 232** (September 7, 2016 DiMaggio Report); and **J.F. Allen 233** (August 9, 2019 DiMaggio Report).

8. During the testimony of Mr. DiMaggio, the Court recessed for a brief break.

9. Following the break, the testimony of Mr. DiMaggio continued.

10. Thereafter, Mr. DiMaggio was subject to cross examination by Mr. McConnell.
During cross examination, Mr. LaSota permitted Mr. McConnell to use the following Exhibit, which was not marked prior to trial: **J.F. Allen 234** (November 8, 2018 DiMaggio Report).

11. Thereafter, Mr. DiMaggio was subject to cross examination by Mr. Jacks and by Mr. Colosimo.

12. During cross examination by Mr. Colosimo, the Court recessed for a lunch break.

13. After the lunch break, the cross examination of Mr. DiMaggio resumed.

14. Thereafter, Mr. DiMaggio was subject to re-cross examination by Mr. McConnell.

15. Thereafter, Mr. DiMaggio was dismissed as a witness and is not subject to re-call.

16. Thereafter, the Court recessed for a brief break.

17. Thereafter, Mr. LaSota called Bryon Willoughby to the stand and he was duly sworn and subject to direct examination. Following qualification questions and voir dire by Mr. Stanley and Mr. Ward, the Court recognized Mr. Willoughby as an Expert in Schedule Analysis, Impact of Delay Claims, CPM Scheduling, and General Construction Claims, over the objection of Plaintiff and without objection by Defendants Redstone or Amec. During the qualification questions, Mr. LaSota marked the following Exhibit, as it was not marked prior to trial: **J.F. Allen 235** (List of Expert Assignments for Mr. Willoughby).

18. Prior to hearing substantive testimony, Mr. Ward made a Motion to continue Mr. Willoughby's testimony, or proceed without use of his slide show presentation (**J.F. Allen Exhibit 236**-Slide Show Presentation Re: Report as to Damages against MarkWest), because by agreement of counsel, expert presentations were to be provided to counsel forty-eight hours prior. The Court granted the Motion with regard to claims regarding the Plaintiff. Counsel agreed that Mr. Willoughby could proceed today regarding the Redstone claims.

19. Thereafter, Mr. Willoughby primarily presented narrative testimony, pursuant to agreement of counsel, with some questioning by Mr. LaSota. During testimony, Mr. LaSota marked the following Exhibit, as it was not marked prior to trial: **J.F. Allen 237** (Slide Show Presentation Re: Report Regarding J.F. Allen Damages as to Redstone). During testimony, Mr. Stanley raised an issue regarding the square footage of the Wall and Mr. LaSota advised he will look into the matter over the weekend to determine whether or not that information was disclosed to counsel.

20. Following direct examination of Mr. Willoughby, the Court recessed for a brief break.

21. After the break, Mr. Willoughby was subject to cross examination by Mr. Stanley.

22. At 4:47 p.m. the proceedings adjourned for the day. The Court and counsel agreed to start testimony at 8:30 a.m. on Monday.

It is **ORDERED**:

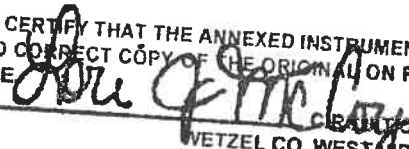
- ❖ The Circuit Clerk shall send this Order to all counsel of record.
- ❖ The Court notes the objections and exception of the parties to any adverse findings or rulings herein.

ENTERED this 5 day of October, 2020.



H. CHARLES CARL, III, JUDGE
BUSINESS COURT DIVISION



I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT IS A
TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN
MY OFFICE
ATTEST:  CIRCUIT CLERK
WETZEL CO. WEST VIRGINIA
BY: _____ DEPUTY CLERK